

# EXHIBIT D

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

IAN J. BROWN, JAMES BROWN  
AND BARBARA BROWN,

Plaintiffs,

VS

CIVIL ACTION NUMBER 04-11924-RGS

UNITED STATES OF AMERICA,  
VERIZON NEW ENGLAND, INC. AND  
BOSTON EDISON COMPANY  
D/B/A NSTAR ELECTRIC,

Defendants.

---

DEPOSITION OF

IAN JAMES BROWN

July 7, 2006  
9:40 a.m.

Prince, Lobel, Glovsky & Tye, LLP  
100 Cambridge Street, Suite 2200  
Boston, Massachusetts

Laurie J. Driggers, Notary Public, Certified Shorthand Reporter,  
Realtime Professional Reporter and Certified Realtime Reporter,  
within and for the Commonwealth of Massachusetts.



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1 Can you give me a general idea of  
2 the amount of compensation that you  
3 receive monthly from the V.A.?

4 A. Sir, as a best guess -- as a  
5 best-faith estimate I would say over --  
6 slightly over 5,000 a month.

7 Q. Okay. And that is -- as far as  
8 you know -- some percentage of what your  
9 pay would have been had you remained in  
10 the service?

11 A. Yes, sir.

12 Q. Okay. And as far as you know,  
13 will that continue throughout your  
14 lifetime?

15 A. Sir, as far as I know, I am  
16 entitled to that; however, there may be a  
17 policy change.

18 Q. Understand. But as you understand  
19 the V.A. program that compensates you  
20 currently --

21 A. Yes, sir.

22 Q. -- it's your current understanding  
23 that you will receive a monthly check for  
24 the rest of your life?



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1 of the bike?

2 A. Yes, sir.

3 Q. All right. And can you describe  
4 that for me?

5 A. Yes, sir. The bike -- front tire  
6 of the bike slid out from underneath me.  
7 The bike began to topple over toward its  
8 right side. I felt the bike losing  
9 control, and I exited the bike in a way  
10 to make myself safe from getting trapped  
11 underneath it.

12 Q. All right. Now you said the bike  
13 fell in such a way as to fall on its  
14 right side. Do you recall when the handle  
15 bar -- sorry -- do you recall the handle  
16 bars moving at all on the bike as you  
17 lost control of it?

18 A. No, sir.

19 Q. Okay. They remained straight?

20 A. Sir, that's an assumption that you  
21 are making. I don't recall the movement  
22 of the handle bars in the process.

23 Q. Okay. Now, when you say the bike  
24 fell so that it was landing on its right



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1 side, would -- was the back tire coming  
2 around to your right or around to your  
3 left side?

4 MR. CHARNAS: Objection.

5 A. Sir, the back tire was not coming  
6 around in a direction --

7 Q. Okay.

8 A. -- that I remember.

9 Q. So the bike just fell towards your  
10 right side; is that correct?

11 A. Yes, sir.

12 Q. Okay. And as that happened, you've  
13 explained how you tried to position your  
14 body, but I'm not sure I understood it.  
15 If you could explain it to me again.

16 A. Sir, I saw the encroaching  
17 guardrail, and I pushed off with my feet  
18 and turned my back to the guardrail for  
19 safety --

20 Q. Okay.

21 A. -- and used the guardrail to guide  
22 me.

23 Q. And as you came off the bike, you  
24 were coming head first --



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1 A. Yes, sir.

2 Q. -- is that right?

3 Okay. And so you positioned your  
4 body as you're in the air; is that right?

5 A. That's right.

6 Q. By the way, did you ever hit the  
7 ground between the point where you lost  
8 control of the bike and the time that you  
9 impacted the guardrail?

10 A. Sir, I do not remember hitting the  
11 ground.

12 Q. Okay. Do you have a recollection  
13 of being in the air the entire time?

14 A. Sir, I have a recollection of being  
15 in the air at the time of the accident.

16 Q. Well, when you say "at the time of  
17 the accident," what do you mean by that?

18 A. I remember leaving the motorcycle,  
19 turning my back to the guardrail and being  
20 in the air during that process.

21 Q. Okay. And at some point did you  
22 hit the guardrail?

23 A. Yes, sir.

24 Q. And do you recall hitting the



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1 guardrail?

2 A. Sir, my eyes were in the opposite  
3 plane from hitting the guardrail, but the  
4 path that I was on and the aim point that  
5 I had picked as a best-faith estimate, I  
6 can say that I hit the guardrail that was  
7 in my line of path -- in my line of  
8 travel. But --

9 Q. And what was -- go ahead.

10 A. I answered already.

11 Q. Okay.

12 A. Sorry.

13 Q. What was the first part of your  
14 body that hit the guardrail?

15 A. Sir, the first part of the  
16 guardrail that I hit -- my body, that I  
17 remember, there might've been a minor  
18 change, maybe the back of my heel hit, I  
19 have no idea what the first point is --  
20 what the first point that I remember  
21 hitting was my back.

22 Q. Okay. About where on your back?

23 A. Sir, I do not recall.

24 Q. Okay. Go ahead.



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1 A. Sorry. I'll wait.

2 Q. Do you remember if it was up by  
3 your shoulders?

4 A. Sir, I do not remember.

5 Q. All right. Do you recall if any  
6 other part of your body made contact with  
7 the guardrail?

8 A. Sir, I do not recall.

9 Q. All right. You don't remember if  
10 your legs hit the guardrail?

11 A. No, sir. I do not remember.

12 Q. Okay. And what do you -- what do  
13 you recall about the accident subsequent  
14 to your first impact with the guardrail?

15 MR. CHARNAS: I'm sorry.  
16 Can we have that question back?

17 (Question read, as  
18 requested).

19 MR. CHARNAS: Thank you.

20 A. Sir. I'm not quite sure I  
21 understand what you're asking there.

22 Q. Well, you said the first thing you  
23 remember hitting the guardrail was your  
24 back?



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1 A. Yes, sir.

2 Q. Okay. What do you recall  
3 immediately after your back hit the  
4 guardrail?

5 A. Sir, I remember continuing on -- in  
6 the -- in the air along the plane of the  
7 guardrail now. I remember traveling in  
8 the air immediately after impacting the  
9 guardrail.

10 Q. Okay. As -- you say you continued  
11 in the air along the plane of the  
12 guardrail. Was your body continuously in  
13 contact with the guardrail as you slid --  
14 I'm sorry -- as you traveled through the  
15 air?

16 A. Sir, I could not see.

17 Q. Do you remember feeling the  
18 guardrail helping -- continuing to contact  
19 your back?

20 A. Sir, I remember feeling the  
21 guardrail but continual, I do not  
22 remember --

23 Q. Okay.

24 A. -- whether it was the entire time



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1 or --

2 Q. Well, let me ask you this: Do you  
3 remember feeling the guardrail against your  
4 back more than just the initial impact  
5 when you hit the guardrail?

6 A. No, sir.

7 Q. Do you remember how long your back  
8 was in contact with the guardrail?

9 A. Sir, I can only give a best-faith  
10 estimate.

11 Q. That's all I'm asking for.

12 A. Less than a few seconds.

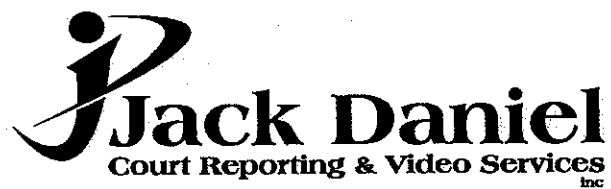
13 Q. Would you say more than one or two  
14 seconds?

15 A. Sir, I cannot say exact. My best  
16 guess would be one -- one or two or a  
17 few.

18 MR. CHARNAS: Don't guess.

19 A. Sorry. My best-faith estimate  
20 would be a few seconds.

21 Q. And I'm just trying to understand  
22 what a few seconds is. I mean, a few  
23 could be ten, it could be 20, it could be  
24 one.



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1 everyday living around your house?

2 A. Certainly. Modifications to the  
3 hospital --

4 MR. CHARNAS: He already  
5 covered modifications to the home.

6 BY MR. LEWIN:

7 Q. Okay. And I suppose my question's  
8 less about physical modifications that  
9 needed to happen in the home, but more  
10 personal to you about your everyday  
11 living.

12 A. The biggest thing was adjusting --  
13 I -- prior to therapy, I lived in a home  
14 with my girlfriend and away from home.

15 Q. Mm-hmm.

16 A. And I had to adjust, move back to  
17 my parents' house, so I was now a guest  
18 in somebody else's house rather than, you  
19 know, owning my own place.

20 Secondary to that, I only had one  
21 room and no room for storage, so almost  
22 everything that I had, I had to  
23 consolidate. Because of that, I only had  
24 room for those things that I could reach,



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1 cover there. So let me just probe a  
2 little bit. If it's all been covered,  
3 just let me know.

4 All your medical treatment is  
5 covered by the -- by the military?

6 A. No, sir.

7 Q. All right. Whose it covered by?

8 A. Sir, the majority of it is covered  
9 by the Department of Veteran Affairs.

10 Q. Okay. And do you expect those  
11 benefits to continue in the future?

12 A. I do, sir.

13 Q. All right. And do they ever  
14 terminate?

15 A. Sir, they may.

16 Q. Do you know?

17 A. I do not know for sure.

18 Q. Okay. Is it your expectation that  
19 they'll continue as long as you are alive?

20 A. No, sir.

21 Q. Okay.

22 A. They -- I would imagine a policy  
23 change.

24 Q. Do you have any knowledge or



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1 information that your benefits will cease  
2 at any given time?

3 A. No. But then again, I have no  
4 knowledge that it's going to continue. I  
5 just don't know much about that topic.

6 Q. But as far as you know, everything  
7 is covered at this point.

8 A. Yes, sir. The -- there are things  
9 that are not covered by the military and  
10 that's why I replied no to one of the  
11 previous questions you asked me.

12 Q. All right. And what are those  
13 things?

14 A. Sir, chiropractic care, any of the  
15 care to help rehabilitate muscles, such as  
16 massage, myofascial release, chronic pain  
17 issues. Some of your medical equipment is  
18 not covered by the Department of Veterans  
19 Affairs, so a lot of the things you need  
20 to do to adapt, you have to provide for  
21 on your own, modifications to clothing and  
22 all kinds of things that you would not, I  
23 guess, typically think of as a burden to  
24 anybody in a situation similar to mine are



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1 typically not covered by medical insurance  
2 or by the Department of Veteran Affairs.

3 Q. Are you receiving chiropractic  
4 care?

5 A. Yes, sir.

6 Q. On a regular basis?

7 A. Yes, sir. It's in the -- it  
8 should be in the notes and if that's not,  
9 we can get that to you.

10 Q. And that's out of pocket?

11 A. Yes, sir.

12 Q. And same question with respect --  
13 by the way, who -- who are you treating  
14 with on the chiropractic care?

15 A. Sir, Doctor Madeline Healey, and  
16 it's documented.

17 Q. How about the muscle massage to  
18 which you referred?

19 A. I can no longer afford to do that.  
20 It was part of the rehabilitation to help  
21 rehabilitate the rhomboids and Latissimus  
22 dorsi that I injured from surgery. Part  
23 of it was done at Doctor Healey's office  
24 and the other part was done by a masseuse,



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1 who was a friend of mine, but is no  
2 longer practicing here.

3 Q. And did you pay for that  
4 treatment --

5 A. Yes, sir.

6 Q. -- out of pocket?

7 And have the problems for which you  
8 sought that treatment, have they resolved  
9 themselves?

10 A. No. I just can't afford them  
11 anymore.

12 Q. Okay. And can you just describe,  
13 again for me, what the -- what exactly the  
14 treatment was for?

15 A. Yes, sir. The pain that I have in  
16 my shoulders and upper back and pretty  
17 much all the pain that I have from  
18 postural sitting and the rods in and all  
19 this stuff that I covered earlier, it was  
20 to help on a muscular sense for the body  
21 to better process some of the fluid and to  
22 help keep me more flexible and hopefully  
23 get me back to a point where I have full  
24 range of motion in some of the muscles in



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1 my back.

2 Q. And the next thing you mentioned  
3 was myofascial release.

4 A. Right.

5 Q. What's --

6 A. That I discussed some of that  
7 earlier. It's a technical term. But  
8 basically the surrounding that covers the  
9 muscle is binding up, making the muscles  
10 cramp. There's techniques you can do to  
11 help relieve that cramping and it's part  
12 of what they did in massage and the same  
13 with the chronic pain. They were just  
14 techniques to release some of the muscle  
15 tension and pain that were there.

16 Q. And was that treatment from the  
17 same people, the Healey chiropractic --

18 A. Yes.

19 Q. -- and your friend who was a  
20 masseuse?

21 A. Yes.

22 Q. Same with the chronic pain --

23 A. Yes.

24 Q. -- that you mentioned?



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1 home or future home?

2 A. Yes, they will pay for  
3 modifications to the home. It's a  
4 one-time deal. And since I don't own the  
5 home that I'm currently living in, I can't  
6 have it modified.

7 Q. And when you say it's a one-time  
8 deal, is it a one-time deal per home  
9 or --

10 A. No, sir.

11 Q. -- it's one shot?

12 A. You're allowed one allotment to  
13 modify a house.

14 Q. And so they -- that was not allowed  
15 for your parents' home because you are not  
16 the owner of the home?

17 A. Incorrect, sir. It may or may not  
18 have been allowed, but because I don't own  
19 the home, I don't have the authorization  
20 to say, you know, I would like you to  
21 modify this house.

22 Q. So there's still -- you have your  
23 one lifetime shot still outstanding?

24 A. To the best of my knowledge, I



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1 might. I don't know.

2 Q. Is there any reason to believe that  
3 you don't?

4 A. There might be a statute of  
5 limitations. There could be a rule --  
6 policies I don't understand about it.

7 MR. CHARNAS: Can we take a  
8 break in the next few minutes?

9 MR. LEWIN: Absolutely --  
10 actually, now's a perfect time.

11 (Off the record at 3:19  
12 p.m.)

13 (Recess taken).

14 (Back on the record at 3:26  
15 p.m.)

16 BY MR. LEWIN:

17 Q. Mr. Brown, if we could go back,  
18 just cover a few things.

19 The first is modifications to your  
20 vehicle.

21 A. Yes, sir.

22 Q. Can you just describe to me the  
23 modifications -- well, let's start first  
24 with the modifications that you have on



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1 Q. It's my understanding that you were  
2 asked some questions about what kind of  
3 wage compensation you're receiving --

4 A. Yes, sir.

5 Q. -- earlier today. And it's my  
6 understanding that you testified you  
7 receive \$5,000 a month from -- I assume  
8 it's the Department of Veterans Affairs?

9 A. Yes, sir.

10 Q. What expenses do you have on a  
11 monthly basis?

12 A. I help pay for home expenses. I  
13 pay for food. Currently I'm paying for  
14 school, clothing. I go through slacks and  
15 underwear a little quicker than most,  
16 chiropractic care. There are many others  
17 that I can't think of right now.

18 Q. How much is your school -- how much  
19 is your school expenses?

20 A. Classes this semester were 3,300 I  
21 think for the class and the lab and the  
22 books were less than a thousand.

23 Q. And that's for this semester?

24 A. Yes, sir. That was for one of the



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1 expenses I think that I can recall off the  
2 top of my head.

3 Q. Do you have -- do you carry life  
4 insurance?

5 A. Currently, I'm not sure. I don't  
6 pay anything additional. Not that I know  
7 of. And I think that my life insurance  
8 in the military actually expired. That's  
9 an interesting point.

10 Q. And you pay for your chiropractic  
11 care?

12 A. Yes, sir.

13 Q. Do you pay for any more medical  
14 care out of pocket?

15 A. No longer. If I come across money  
16 somehow, I'll probably start back up into  
17 massage and hopefully someday be able to  
18 afford a personal trainer, get back into  
19 the gym.

20 Q. Do you belong to a gym?

21 A. Not right now.

22 Q. How much a month would you estimate  
23 you pay in home expenses? You mentioned  
24 you buy your own food.



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1 A. Yes, sir. I buy my own food. And  
2 I -- I buy -- I pay for the electricity,  
3 the gas. I just help out on bills for my  
4 parents when they need. So to estimate  
5 how much I pay, as a best -- best-faith  
6 estimate, I think about a thousand.

7 Q. Do you pay your parents rent?

8 A. Right now, no.

9 Q. Have you ever?

10 A. No. Not yet.

11 Q. Do you plan to pay them rent?

12 A. I hope not.

13 Q. Okay.

14 A. I'm trying to.

15 Q. Has there been a discussion about  
16 paying rent?

17 A. No. Not yet. I'm trying to save  
18 up money to get a place of my own  
19 someday.

20 Q. And have you been saving money?

21 A. Yes, until school started.

22 Q. I'll just ask, I don't know if it's  
23 been covered already, but do you have any  
24 -- you indicated that you'd like to get a



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1 situation, sir.

2 Q. Would it be fair to say that you  
3 were concerned that it may cause an  
4 accident if you rode over it?

5 A. Yes, sir.

6 Q. Had you ever noticed the guardrail  
7 prior to January 4th, 2002?

8 A. Yes, sir.

9 Q. And had you ever noticed the  
10 telephone pole prior to January 4th, 2002?

11 A. Yes, sir. The utility pole.

12 Q. And do you recall how many  
13 telephone poles or utility poles are on  
14 the roadway there?

15 A. No, sir. You see them out of the  
16 periphery of your vision when you travel,  
17 but I never bothered to count them.

18 Q. Okay. Could you describe the  
19 topography as you approach the area of  
20 your accident?

21 A. Sir, at that time -- and I  
22 understand now that the road had been  
23 reconditioned. The asphalt was kinda old,  
24 and it -- the depression was -- looked



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1 almost as though the manhole cover was too  
2 heavy and kind of pulled the roadway into  
3 it. Approaching that, you are coming upon  
4 a road that is slightly going uphill.  
5 It's actually quite a -- kind of a steep  
6 hill. And then it's a left-hand turn  
7 toward the top of the hill. That's my  
8 best guess of the topography.

9 Q. Okay.

10 A. There are trees and obstructions  
11 off to the right side of the guardrail and  
12 toward the inside you had adjoining  
13 traffic and a fence and such.

14 Q. Okay. Do you recall that there was  
15 a facility right -- about that curve  
16 there's a facility on the left on the  
17 hill?

18 A. Yes, sir.

19 Q. Okay. And there's a -- there's a  
20 road by which people can egress and --  
21 enter into and exit that facility?

22 A. Yes, sir.

23 Q. In relation to that roadway, the  
24 egress and ingress into that facility,



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UNITED STATES OF AMERICA,  
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Defendants.

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9:14 a.m.

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Ayako Odanaka, Notary Public, Certified Shorthand Reporter and Registered  
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1 I -- My body and my head were pointed and  
2 oriented in the direction of travel. So if  
3 I were going down the roadway on the  
4 motorcycle, when I pushed off, my head --  
5 I was traveling down the road head first  
6 in the direction that the motorcycle was  
7 traveling, in a general sense. But  
8 whether or not whether the motorcycle went  
9 one direction and I went another, you  
10 know, would not be the exact same  
11 direction, but I was going head first down  
12 the roadway.

13 Q. And the road, after the manhole  
14 where the depression was, does Hartwell  
15 Road kind of incline and curve to the  
16 left?

17 A. Yes, sir.

18 Q. Do you have a -- You testified that  
19 you were not heading at the guardrail on  
20 what I would kind of call a 90-degree  
21 angle, straight toward the guardrail. Do  
22 you have a memory as to what angle you  
23 were traveling toward the guardrail?

24 A. Sir, the best faith estimate, as I



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1 Your body came into contact with the  
2 guardrail, do you recall how many feet  
3 that was from the utility pole along  
4 Hartwell Road that you believe you struck?

5 A. No, sir, I do not recall.

6 Q. Do you know if it was -- Do you  
7 recall whether it was more than ten feet  
8 from the utility pole?

9 A. No, sir, I do not recall.

10 Q. Do you know if it was more than 20  
11 feet from the utility pole?

12 A. Sir, I do not recall.

13 Q. I believe you testified earlier  
14 that when you picked the aim point you did  
15 not see the utility pole; is that right?

16 A. Yes, sir.

17 Q. Do you have a memory as to --  
18 Strike that. When you came into contact  
19 with the guardrail, did the direction in  
20 which your body was traveling change or  
21 was it affected by the guardrail?

22 MR. CHARNAS: I'm sorry,  
23 could we have that question read back,  
24 please?



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1 (Question read).

2 BY MR. CALLAHAN:

3 Q. Let me rephrase that, it's not a  
4 real good question. You testified that you  
5 believe your body was traveling at a less,  
6 you know, less than 45-degree angle toward  
7 the guardrail. What I'm trying to find  
8 out is was the direction of your the --  
9 Was the direction of the your body  
10 redirected in any manner by the guardrail?

11 A. Yes, sir. I did not go through  
12 the steel of the guardrail. I was averted  
13 because of the guardrail.

14 Q. Do you have an understanding as to  
15 whether or not -- Strike that. If the  
16 guardrail had not been at that location,  
17 would your body have then continued into  
18 the area on the other side of the  
19 guardrail where the woods and trees are?

20 MR. CHARNAS: Are you  
21 assuming that he made the same maneuver  
22 he's described to try to aim for the  
23 guardrail?

24 MR. CALLAHAN: Yes.



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1 A. Sir, trying to estimate what would  
2 happen in a -- In potentially different  
3 scenarios with different circumstances  
4 would be a vague estimate at best. I  
5 would think that given that situation I  
6 may have reacted differently. And I'm not  
7 quite sure, given the loose parameters of  
8 the scenario; it's difficult to say.

9 Q. I don't want to you speculate at  
10 all. What I'm asking you to do is:  
11 Taking the same conditions and the day of  
12 your accident that you pushed off the your  
13 motorcycle in the same direction, if the  
14 guardrail was not in that location, would  
15 your body have then continued on to the  
16 side of the road and into that wooded  
17 area?

18 MR. CHARNAS: I'm sorry, I  
19 have to ask to read that back. (Question  
20 read).

21 MR. CHARNAS: I have to  
22 object on the ground that he's testified  
23 that he did what he did because he aimed  
24 for the guardrail. So you're asking to



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1 say what would have happened if he'd aimed  
2 for the guardrail but the guardrail wasn't  
3 there. On that ground I object. You can  
4 answer if you can.

5 A. Sir, going back to my previous  
6 statement, it's difficult to say on those  
7 -- Given those circumstances mainly for  
8 part of the reason that Scott mentioned.  
9 And what I can say is if my body had been  
10 traveling in the direction it was because  
11 of the choice that I had made, if the  
12 guardrail was not there, it is possible  
13 that I would have just passed into the --  
14 What we're calling as the brush in your  
15 scenario on the side of the road.

16 Q. Okay. And I think you test -- And  
17 just so I understand your testimony, is  
18 that you were approaching -- Your body was  
19 approaching the guardrail about a less  
20 than 45-degree angle, based on your best  
21 faith estimate. And is it your testimony  
22 that the guardrail redirected the way in  
23 which your body was traveling into the  
24 utility pole?



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1 A. Yes, sir.

2 Q. Can you tell me how your body was  
3 redirected?

4 A. Sir, because I was approaching the  
5 guardrail at an angle and now traveled in  
6 the direct path of the guardrail, the  
7 guardrail decided my path from that point  
8 on. Not myself and not the direction of  
9 travel, which I left the motorcycle. So  
10 what the guardrail did was change the  
11 angle of my body movement and beyond that  
12 I would only imagine that the experts  
13 could best put that together.

14 Q. And, not trying to put words in  
15 your mouth, just trying to get  
16 understanding of what I think you're  
17 saying. Is it fair to say that your body  
18 was traveling - (Interruption).

19 BY MR. CALLAHAN:

20 Q. -- At a, as you described, a less  
21 than 45-degree angle toward the guardrail,  
22 and then when it came in contact with the  
23 guardrail its -- Your body was then  
24 redirected kind of forward toward the



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1 utility pole?

2 MR. CHARNAS: I'm going to  
3 object it was asked and answered. But go  
4 ahead and answer it again if you want.

5 A. Sir, my what I am saying is that  
6 the guardrail changed the path along which  
7 I was traveling. I contacted the  
8 guardrail and was then traveling along the  
9 path of the guardrail. The guardrail  
10 changed my path, my body's motion, so that  
11 the guardrail now dictated how my body was  
12 moving and not the general physics of the  
13 situation.

14 Q. I think we're saying the same thing  
15 but I'm just --

16 A. I think so too. I don't mean to  
17 get too technical and too vague.

18 Q. I understand. Would it be fair to  
19 say that your body direction was not a  
20 straight line from where you exited --  
21 Exited the motorcycle directly to the  
22 utility pole?

23 A. Correct, sir.

24 MR. CHARNAS: Wait, when you



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1 that his motorcycle took at the time of  
2 the accident?

3 MR. WILMOT: I can only ask  
4 him to do that generally.

5 MR. CHARNAS: Okay.

6 BY MR. WILMOT:

7 Q. So I want you to take this marker  
8 and try to draw for us what your general  
9 bike path was driving down Hartwell Road  
10 using this photo in Exhibit 1.

11 A. (Witness viewing document). Sir, I  
12 was traveling this way.

13 Q. Can you draw a path line for me on  
14 the road in this picture?

15 MR. CHARNAS: I have to  
16 object only because if he draws that path  
17 it seems to indicate that's the precise  
18 path he's going in and whether he was left  
19 or right of that dotted line --

20 MR. LEWIN: That's what he's  
21 asking for him to do.

22 MR. WILMOT: Well, I'm  
23 asking him to do, the best he can  
24 remember, to at least try to draw a path



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1 line for us. You know, this is -- It's a  
2 wide road. I mean, was the path line  
3 over here, on the left side of the road  
4 into oncoming traffic, is it on the yellow  
5 line.

6 MR. CHARNAS: As long as  
7 it's understood that you're asking him  
8 generally where he was going, I have no  
9 objection to that. But if you're trying  
10 to get him to draw a precise path, I  
11 don't think that's possible.

12 MR. LEWIN: Scott --

13 MR. CALLAHAN: Why don't we  
14 ask him if he's able to, we'll start with  
15 that?

16 MR. CHARNAS: Sure.

17 BY MR. WILMOT:

18 Q. Are you able to draw a general  
19 travel line for us using this photo?

20 A. Sir, I've indicated the direction I  
21 was traveling.

22 Q. Not the direction, but a path line.  
23 If you were to draw line on this road,  
24 the path of your bike, on January 4th,



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1 2002?

2 A. Sir, I was traveling along the  
3 roadway in the correct lane. This is the  
4 path that I was taking along this road and  
5 around the curve.

6 Q. Okay. You're on a motorcycle,  
7 right?

8 A. Yes, sir.

9 Q. Two wheels --

10 A. (Witness nodding).

11 Q. -- That are both aligned with each  
12 other fairly, right?

13 A. Yes, sir.

14 Q. Can you draw the path line of your  
15 bike on this road? If you were to draw a  
16 straight line indicating how your bike was  
17 traveling on Hartwell Road, can you draw  
18 that line for me on this picture?

19 MR. LEWIN: Do you mean a  
20 continuous line?

21 MR. WILMOT: Continuous  
22 line, yeah.

23 MR. CHARNAS: Just so it's  
24 clear, and I don't mean to be difficult,



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1 but you're asking him to draw a precise  
2 path now?

3 MR. LEWIN: Scott, he's  
4 asking for the best he can do --

5 MR. WILMOT: The best line  
6 that he can draw.

7 A. (Witness viewing document). Sir,  
8 from the best that I can do, I know that  
9 I was on this side of the roadway, I  
10 guess, toward the inside of the turn.

11 Q. All right. Well, just draw that  
12 line for me then.

13 A. Did you want a solid line or --

14 Q. Solid line.

15 A. (Witness complying). As a best  
16 guess, a best faith estimate, I was on  
17 that portion of the roadway traveling  
18 along the roadway in the direction of --

19 Q. Okay. Let me show you what's  
20 marked as Exhibit 2. Exhibit 2 is a --

21 MR. CHARNAS: May we go off  
22 the record for a second?

23 MR. WILMOT: Sure.

24 (Discussion off the record).



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1 ///

2 BY MR. WILMOT:

3 Q. Why don't you retrace that line  
4 with a black marker?

5 A. (Witness complying).

6 Q. Okay.

7 MR. LEWIN: Is that better?

8 BY MR. WILMOT:

9 Q. Now, this may not be a good photo  
10 to do that. Let me move on. I'm showing  
11 you what's marked as Exhibit 2, which, if  
12 you want to look at 1 and 2 side by side,  
13 the bottom photograph in Exhibit 2 appears  
14 to be a closer shot of -- Or at least  
15 further along down the road than what was  
16 depicted in Exhibit 1; would you agree  
17 with that?

18 A. (Witness viewing document). Sir, it  
19 was prior to the point of that photo or  
20 this is further along the road, correct.

21 Q. Using this black marker, could you,  
22 in this photograph, the bottom photograph  
23 of Exhibit 2, show -- draw a line  
24 indicating the best that you can remember



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1 your bike's travel path along Hartwell  
2 Road?

3 A. (Witness viewing document). Yes,  
4 sir, I can.

5 Q. Okay. Why don't you go ahead and  
6 do that? Can you do it as a solid line,  
7 yeah.

8 A. (Witness complying).

9 Q. Okay. Can you see in this photo  
10 on Exhibit 2 where the depression in the  
11 road, that you described that caused you  
12 to lose control of your bike, is?

13 MR. CHARNAS: Just so it's  
14 clear there are two photographs in Exhibit  
15 2. Are you referring to the

16 BY MR. WILMOT:

17 Q. The bottom photograph in Exhibit 2.

18 A. (Witness viewing document). Sir,  
19 it's difficult to see from this picture.

20 Q. Okay. In Exhibit 3, again,  
21 focusing on the bottom photo, would you  
22 agree that this is, again, the same scene  
23 but further -- Further down the road  
24 heading east than Exhibit 1 and 2?



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1 A. (Witness viewing document). The  
2 bottom photo, yes, sir.

3 Q. Okay. Can you continue to draw the  
4 path of your bike along Hartwell Road in  
5 the bottom photo of Exhibit 3?

6 A. No, sir.

7 Q. You cannot?

8 A. No, sir.

9 Q. And why is that?

10 A. Sir, because at this point I think  
11 that the bike was no longer under full  
12 control, so I'm not quite sure where the  
13 bike went.

14 Q. You lost control at the depression  
15 in the road, correct?

16 A. Yes, sir.

17 Q. Can you see the picture -- Can you  
18 see the depression in the road in this  
19 picture, the bottom photo of Exhibit 3?

20 A. (Witness viewing document). No,  
21 sir, I'm not seeing it.

22 Q. Okay. Let me show you Exhibit 4.  
23 In either top or bottom photo, are you  
24 able to identify the depression in the



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